Supreme Court, U.S.
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NO. 96-136

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

ABELE ASSOCIATES, a Pennsylvania limited Partnership

PETITIONER,

v.

THE BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

RESPONSE TO PETITION FOR WRIT OF CERTIORARI FILED ON BEHALF OF SOUTH FAYETTE TOWNSHIP

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TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

ARGUMENT 3

I. THE PETITIONER WAS NOT DENIED DUE PROCESS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND WAS GIVEN A FAIR AND UNBIAS HEARING IN FRONT OF THE SPECIAL MASTERS 3

A. The findings of the Special Masters are supported by facts in the record and were not based on a bias opinion 3

B. The comments alleged to show bias do not give rise to a due process violation . . 3

CONCLUSION 8

TABLE OF AUTHORITY

County of Monroe v. Bolus,
149 Pa. Commw. 458, 618 A.2d 178 (1992) . 4

Johnson v. Mississippi,
403 U.S. 212, 91 S.Ct. 1778 (1971) . 3,5,6

In Re Murchison,
349 U.S. 133, 75 S.Ct. 623 (1955) 6

STATEMENT OF THE CASE

The Respondent is South Fayette Township, a Township of the First Class located in Allegheny County, Pennsylvania. The Respondent is one of three entities that taxes real estate property based on the assessed value assigned by Allegheny County.

Allegheny County initially assigned the Petitioner's property an assessed value of $ 405,000.00 based on the fair market value of $ 1,620,000.00 for the year 1990. Petitioner did not agree with the assessment and filed an appeal to the Board of Property Assessment which reduced the value of Petitioner's property to $ 326,500.00 based upon a fair market value of $ 1,306,000.00. The Petitioner then appealed to the Allegheny County Court of Common Pleas who assigned the case to Special Masters to conduct a hearing and prepare a Report. The assessed value of Petitioner's property was further reduced by the Master's Report to $ 300,000.00 based upon a fair market value of $ 1,200,000.00. (App. p.2-3). The Special Masters did recommend higher assessed values for the years 1991-1993. (App. p.45).

The Petitioner then filed objections to the Master's Report. The trial court overruled Petitioner's claims that the Masters relied on personal knowledge outside the record when making their decision. The trial court stated that by making such a claim, the Petitioner was ignoring the facts of record before the court. (App. p.50). The trial court found that the Master's findings were supported by all three approaches to determining assessed value and that the adjustments made by the Masters

based on the values proposed by the taxing bodies were appropriate. (App. p.50).

Petitioner then filed an appeal to the Commonwealth Court of Pennsylvania. Petitioner again raised the issue that it was denied due process because the Master's Report contained "facts and opinions," specifically "opinions" concerning the location of the land. (App. p.6). The Commonwealth Court found Petitioner's argument puzzling stating that all such reports contained "opinions" based on the evidence presented. (App. p.6). Accordingly, the Commonwealth Court affirmed the decision of the Court of Common Pleas of Allegheny County.

Petitioner then filed this Writ of Certiorari claiming a violation of its due process guaranteed under the Fourteenth Amendment.

ARGUMENT

I. THE PETITIONER WAS NOT DENIED DUE PROCESS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND WAS GIVEN A FAIR AND UNBIAS HEARING IN FRONT OF THE SPECIAL MASTERS.

Respondent does not disagree with Petitioner that this Court considers cases where a state court has rendered an opinion on a federal question that conflicts with relevant decisions of this Court. However, the Respondent disagrees that there is any such conflict in the case.

Petitioner repeatedly emphasizes that trial before a non-bias Judge is essential to due process. Johnson v. Mississippi, 403 U.S. 212, 217, 91 S.Ct. 1778, 1780 (1971). Respondent does not dispute this, but in this instance there is no evidence of bias, and therefore no violation of due process.

A. The findings of the Special Masters are supported by facts in the record and were not based on a bias opinion.

Petitioner relies on three statements in the Master's Report that Petitioner claims evidence the bias it suffered. However, Petitioner ignores the remainder of the Master's Report where the findings of the Masters are based, not on personal opinion, but on all three recognized approaches to valuation of property for tax purposes, i.e. cost, income and comparable sales approaches.

The first comment alleged to illustrate this extreme bias suffered by Petitioner is when the Masters comment in the Report that they knew the location of Petitioner's property. Merely knowing where a block of land is located does not discredit the Master's findings when their findings are duly supported by facts in the record. The Master's statement that the Petitioner's land is a "prime location" is supported by the testimony of Respondent's tax expert who employed all three approaches to valuation when he made his Report. (App. p.18). Petitioner's second excerpt where bias is alleged is also a statement that is supported by the evidence presented by the Respondent's expert. (App. p.18).

A trial court's function in a tax assessment case is to properly weigh conflicting testimony and conflicting values proposed by each parties expert witness and to arrive at a fair market value based upon the credibility of those opinions. County of Monroe v. Bolus, 149 Pa. Commw. 458, 618 A.2d 178 (1992). The Masters performed their designated function of weighing the testimony presented and coming to a conclusion based on that testimony.

The Petitioner's expert was impeached on six different occasions. (App. p.34-5). The credibility of the owner of Abele Associates was also impeached. (App. p.35). The Masters found that Petitioner's testimony and evidence presented revealed an appraisal theory they referred to as "creative appraising." The Masters found that rather than,

...setting a market valuation for

> the subject property on the basis of an independent arms length transaction, appellant's expert witness,...and general partner,..., simply sought to justify their market value opinions on a skewed cost and income basis colored with a jargon of mostly irrelevant testimony and exhibits...(App. p.27).

It is within the Master's discretion to find the testimony of Respondent's expert more credible and superior to Petitioner's. (Pl.App. p.44). The Respondent's expert was found by the Masters to present a thorough understanding of the law and ethical appraisal practices and principals. (App. p.44).

Petitioner's third claim of bias in the Master's Report is actually a statement by the Masters emphasizing that they disregarded any opinion they may have as to the superior location of Petitioner's property. The Master's emphasized that their decision was based on the evidence presented before them by the experts and witnesses. (App. p.45).

B. <u>The comments alleged to show bias do not give rise to a due process violation.</u>

Petitioner relies on case law where judges were found to be biased against litigants before them. These cases are clearly distinguishable from the case before the Court. In <u>Johnson v. Mississippi</u>, 403

U.S. 212, 91 S.Ct. 1778 (1971), this Court found that bias existed where a judge presiding over a contempt proceeding had been a losing defendant in a civil right suit brought by a litigant before him. In finding that the judge should have recused himself, this Court pointed out that it did not rely solely on contemporate remarks made by the judge concerning civil right litigants. Rather, it was the prior negative contact the Judge had with the party standing before him that made it inappropriate for him to preside over a contempt hearing. Johnson, at 218, 1780. Petitioner can argue that the comments made by the Masters may have been unnecessary, but they do not show bias and do not give rise to a due process violation.

In In Re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955), this Court stated that fairness requires an absence of actual bias in the trial of cases. There was no actual bias against the Petitioner, merely knowing where a block of land is located does not discredit the findings of a court that are based on facts presented by an expert. Petitioner did not suffer bias or prejudice during his hearing in front of the Special Masters as did the petitioners in Murchison or Johnson.

The Special Masters heard three days of testimony, including that of the general partner of Abele Associates, Abele's expert, and the expert of the taxing bodies. The Masters found that taxpayer's expert was impeached on six specific instances, exposing oversights and exclusions concerning the property in question. (App. p.34-5). The determination of credibility is within the discretion of the trier-of-

fact. The inconsistent testimony of Petitioner's expert, the deficiency of Petitioner in complying with the standards in statutory, case law, and ethical appraisal principles, supports the Master's determination of credibility (App. p.44). The Masters adopted the testimony of Respondent's expert which was fully supported by evidence and which was within their discretion.

The Petitioners were given a fair and impartial trial in front of an unbiased court. That the court found that the Petitioner and its expert lacked credibility is not a violation of Petitioner's due process. The decision of the Special Masters is fully supported by the record and should be affirmed by this Court.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Honorable Court to deny Petitioner's Writ of Certiorari.

Respectfully submitted,

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